

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

CASE NO. 11-5460

RENDITION NO. DCF-12-144-FO

v.

D. C. and J. C.,

Respondents.

FILED

APR - 9 2012

DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me for entry of a final order. The recommended order concludes the Department did not establish that respondents threatened harm, failed to protect, or inadequately supervised foster children in their care such that their foster care license should be revoked. The Department filed exceptions to the recommended order, which are addressed below.

The Department's exceptions to the administrative law judge's findings of fact are rejected. While the exceptions may be technically valid, the corrections the Department seeks are not critical to the outcome of the proceeding. The Department's third exception is the most substantive, but the ALJ's finding there is supported by competent substantive evidence and cannot be disturbed. The ALJ's findings of fact are adopted.

The Department's exceptions six and seven challenge the ALJ's conclusion in recommended order paragraph 41 that the administrative complaint did not adequately allege respondents violated certain foster care

licensing rules such that their license should be revoked. The ALJ, citing *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371 (Fla. 1st DCA 1996), concludes the Department could not revoke respondent's foster care license for violation of particular Department rules, because the administrative complaint did not cite the specific rules pertinent to the facts and circumstances alleged and proven. The Department's exceptions on this point are well-taken.

Cottrill, citing to section 120.60(5), Florida Statutes, requires an administrative complaint afford "reasonable notice to the licensee of *facts or conduct* which warrant the intended action". 685 So. 2d 1371, 1372. (emphasis supplied). Here, the administrative complaint alleged, with great specificity, the facts and conduct supporting revocation of the foster care license. The ALJ's findings of fact largely verified those allegations. The administrative complaint referenced section 409.175(9), Florida Statutes, as the legal basis for revocation. The complaint further advised "[y]our actions forced the immediate removal of both children from your home and the Department's determination that you were in clear violation of applicable statutes, codes, and the bilateral service agreement." Section 409.175(9)2., Florida Statutes, authorizes the Department to revoke a license for "a violation of the provisions of this section or of licensing rules promulgated pursuant to this section". The administrative complaint afforded respondents adequate notice the actions detailed in the complaint warranted revocation based upon violation of section 409.175(9), foster care licensing rules, and the bilateral service agreement.

I also reject the ALJ's conclusion in recommended order paragraphs 38 and 42 that respondent's actions did not constitute an intentional or negligent act which materially threatened the health or safety of the foster children. The ALJ found as fact respondents refused to allow a child protective investigator into the home to investigate an allegation [REDACTED]

[REDACTED]

Rule 65C-13.031(8), Florida Administrative Code, authorizes Department staff¹ to make unannounced inspections of the foster home, including examination of all rooms and areas on the property and interviews of all household members. The bilateral service agreement prohibits foster parents from threatening the foster children with removal from the home. [Department Exhibit 4, p. 29]. This restriction is expressly premised on concern for the emotional well-being of the children, who may believe they "are doomed to a series of placements and rejection". 65C-13.029(1)(g)11.c.(IV), Florida

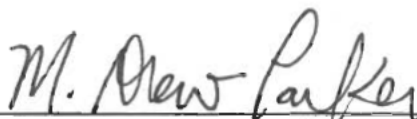
Administrative Code, directs foster parents to send a child's clothing and personal belongings with the child when he or she leaves the home. This requirement is intended to help ensure a child's basic clothing and hygiene needs can be met and to assist the child to maintain an identity and sense of self by keeping their own clothes and personal belongings.

Respondents' behavior, as recounted in the ALJ's findings of fact, was outrageous. It violated the foregoing standards and endangered the children's emotional well-being. The administrative complaint, while perhaps not a model document, specifically alleged the facts and conduct on which the license revocation was based, and generally referenced the applicable statute, rules, and the bilateral services agreement. It satisfied the standard provided in section 120.60(5), Florida Statutes, and explained in *Cottrill*.

The ALJ's conclusions of law of are adopted, except as modified above. The ALJ's recommendation is rejected.

Accordingly, respondents' foster care license is REVOKED.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 9th day of April, 2012.



David E. Wilkins, Secretary

RIGHT TO APPEAL

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE

¹ The rule refers to licensing staff. Given the late hour and immediate response required for the abuse report, the Department's protective investigator was acting in place of the foster care caseworker.

DEPARTMENT OF CHILDREN AND FAMILIES, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, IN THE DISTRICT COURT OF APPEAL WHERE THE APPELLANT RESIDES, OR IN THE FIRST DISTRICT COURT OF APPEAL. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA RULES OF APPELLATE PROCEDURE. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished:

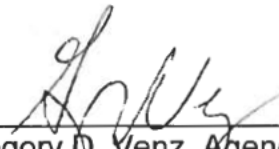
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D. C. and J. C.
(address of record)

Claudia Llado, Clerk
Division of Administrative Hearing
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this final order was provided to the above-named individuals electronically or by U.S. Mail, this 9 day of April, 2012.



Gregory D. Venz, Agency Clerk
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